

Application No.: 10/533,101
Amendment and Response dated March 18, 2009
In Reply to Office Action of December 31, 2008
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REMARKS

Claims 1-14 are currently pending in this application. Claims 1 and 11 have been amended. Claims 9, 10 and 14 have been cancelled. Applicants respectfully request reconsideration of the application based on the above amendments and following remarks.

Applicants' Response to the Examiner's Objection

The Examiner has objected to the term "step (iii)" in claims 10 and 11. Claim 10 has been cancelled. Claim 11 has been amended. The term "step (iii)" has been replaced with "step (3)". As such, it is respectfully submitted that this objection has been overcome.

Applicants Response to 35 U.S.C. §103 (a) Rejection over Aldrich in view of Franke

Claims 1-10 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,517,205 to Aldrich et al. (hereinafter "Aldrich") in view of DE 19503635 to Franke (hereinafter "Franke"). Applicants respectfully request reconsideration of this rejection on the basis that the combination of references fails to render the claims obvious as amended herein.

The Examiner alleges that:

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of making a filled confectionary article as disclosed by Aldrich, with the use of the chocolate processing steps disclosed by Franke to allow the use of a chocolate core, because subjecting the chocolate to shear allows the production of chocolate with flow properties desired for use in confections (translation of Franke, p. 2, para. 8).

(Office Action, at page 4).

Claim 1 has been amended. In particular the following recitation was added to claim 1: "wherein the chocolate composition is subjected to the high shear in the depositor immediately prior to being introduced into the moulds during step (3)". As such, the present application relates to the preparation of centre-filled confectionery articles using one-shot moulding. In

particular, the present invention involves a process in which the centre-fill material and the casting material are co-deposited, i.e. deposited simultaneously. As discussed in the introduction of the application, prior art processes encounter problems because a high temperature is required for the candy to flow, but this high temperature has adverse effects on the chocolate composition. (Instant specification, page 1).

Aldrich describes a one-shot process for preparing a centre-filled candy in which the casing is a clear hard candy composition. Chocolate is suggested as a possible filling. The Examiner notes that Aldrich discloses depositing the core composition through a nozzle, however Aldrich does not disclose the application of a high shear of 100s^{-1} .

Contrary to the Examiner's assertions, it would not be obvious to one of skill in the art at the time the invention was made to adjust the shear generated by the nozzle in order to produce chocolate with the flow properties desired. Aldrich does not recognize the difficulties associated with co-depositing candy and chocolate. Therefore, the skilled artisan would not look to Aldrich in an attempt to modify the process.

Franke describes a method of conching chocolate, which involves the application of high shear. The title of the application is "Verfahren und Vorrichtung zum Conchieren von Schokoladenmassen", which means Process and Apparatus for Conching Chocolate Masses. Conching is an essential step in the preparation of good quality chocolate. Generally, chocolate is prepared by mixing together the ingredients to provide a smooth fluid paste, conching to improve the flavour and texture, tempering and finally moulding.

The combination of Aldrich and Franke is purely hindsight reconstruction, as one of ordinary skill in the art would see no reason to combine the two. Assuming *in arguendo*, that Aldrich and Franke are properly combinable, the skilled person would apply the high shear during the conching step, rather than in the depositor. As such, the advantageous viscosity characteristics would be lost before the chocolate was deposited. Such a process would therefore

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not fall within the scope of claim 1, as amended herein. In fact, such a process would fail to achieve the improvement of the claimed process.

There is no apparent reason why one of skill in the art would combine the elements at issue in the fashion claimed by the present invention. As such, Applicants respectfully submit that independent claim 1, and any claims that depend therefrom, are patentable over Aldrich and Franke, each taken alone or in combination. Reconsideration and withdrawal of the 35 U.S.C. §103 rejection based on this combination is respectfully requested.

Applicants' Response to 35 U.S.C. §103 (a) Rejection over Aldrich in view of Franke

Claims 11-14 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Aldrich in view of Franke and further in view of WO 96/39045 to Cully (hereinafter "Cully"). Claim 11 has been amended. Claim 14 has been cancelled. Applicants respectfully request reconsideration of this rejection on the basis that the combination of references fails to render the claims obvious as amended herein.

The Examiner acknowledges that Aldrich and Franke fail to disclose subjecting the chocolate composition to a pre-shear prior to molding it, but alleges that:

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of Aldrich in view of Franke, with the application of pre-shear as disclosed by Cully, because subjecting the chocolate to pre-shear reduces the viscosity of the chocolate, resulting in improved smoothness (Cully, p. 1., line 3-8).

(Office Action at page 7).

Claims 11-13 depend upon claim 1. As stated in detail above, the combination of Aldrich and Franke fails to render the claims obvious. Cully was merely cited for the disclosure of a pre-shear and adds nothing of relevance to Aldrich or Franke in this regard. As such, there is no

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apparent reason why one of skill in the art would combine the elements at issue in the fashion claimed by the present invention. As such, Applicants respectfully submit that independent claim 1, and any claims that depend therefrom, are patentable over Aldrich and Franke, each taken alone or in combination. Reconsideration and withdrawal of the 35 U.S.C. §103 rejection based on this combination is respectfully requested.

This application is believed to be in condition for examination. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,



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